



D. KENT MICHIE  
Insurance Commissioner  
Utah Insurance Department

JON M. HUNTSMAN, JR.  
*Governor*

## Summary of Legislation

### **H B 33 INSURANCE RELATED INVESTMENT AMENDMENTS**

**Representative Jim Dunnigan, Chief Sponsor**

**Senator Curtis Bramble, Senate Sponsor**

### **Background**

- Investment Custodians (31A-4-108. Power to hold property in other than own name; lines 40, 45, 53-65).
  - Insurance companies maintain and manage extensive investment portfolios. In today's business environment, it is common practice to use a "custodian", including broker/dealers to improve the efficiency and effectiveness of investment management practices.
  - Currently, Utah Code Annotated (U.C.A.) 31A-4-108 requires that ALL assets of a Utah insurance company be held in the name of the insurance company, except for securities kept under a custodial agreement or trust arrangement with one of the following:
    - securities kept under a custodial agreement or trust arrangement with a bank,
    - a securities firm's trust company,
    - or a trust company approved by the commissioner.

This bill will add broker/dealers as a fourth authorized entity to function as a custodian of insurer assets, provided there is a qualifying custodial agreement.

- The National Association of Insurance Commissioners (NAIC) has extensively studied the use of broker/dealers as "custodians" of insurance company assets. They have concluded that insurer assets and policyholders would be adequately protected and therefore it is appropriate to allow broker/dealers as authorized custodians. The NAIC has suggested the addition of broker/dealers as authorized custodians in a Model Law.
- The current Utah statute has negatively impacted the ability of some Utah insurance companies to effectively manage their assets.
- Permitted Investments (31A-18-105. Permitted classes of investments; lines 89-92, 102-108; and 31A-18-106. Investment limitations generally applicable; lines 155-156).
  - In 2001 amendments were made to 31A-17-201(2) to codify insurance accounting practices common among the various states, including permissibility of investments.
  - Changes should have also been made to 31A-18-105 and 106 to ensure consistency with 31A-17-201(2) and codified insurance accounting practices. However, 31A-18-105 and 106 were

overlooked creating an inconsistency between existing statutes and codified insurance accounting practices.

- Codified insurance accounting practices allowed American Depositary Receipts (ADRs) as permitted investments but there were no specified limitations to ensure diversification and protection of policyholders. This legislation adds appropriate limitations to ensure diversification and protection of policyholders.
- Other changes to the code sections in this bill are non-substantive, formatting changes by Legislative Research.

### **Effects of Legislation**

#### Investment Custodians (31A-4-108):

- Lines 35-39 and 41-44. Legislative Research drafting change.
- Lines 40 and 45. Allows Utah insurance companies to use brokerage firms as authorized custodians of investments, subject to approval by the commissioner.
- Lines 46-52. Legislative Research drafting change.
- Lines 53-65. Clarifies the actions the Commissioner is already authorized to take against an insurance company that does not hold assets in its own name or under a qualifying custodial agreement with one of the entities approved by this statute.

#### Permitted Investments (31A-18-105 and 106):

- Lines 88-92 and 101-108. Eliminates inconsistencies between insurance accounting practices, 31A-17-201(2), and 31A-18-105 regarding permissibility of investments. Clarifies American Depositary Receipts (ADRs) as common stock, if traded on one of the three stated exchanges, or other investment, if not traded on one of the three stated exchanges. This distinction is necessary for applying proper limitations established by subsection 31A-18-106, which ensure proper asset diversification and protection of policyholders.
- Line 112. Legislative Research enumerating change because of change to section.
- Lines 133-140. Legislative Research drafting change.
- Lines 155-156. Provides limitations for assets made admissible by this legislation.
- Line 178. Clarifies that real property must be located in the United States.
- Line 179. Legislative Research enumerating change because of change to section.

### **Benefits of Legislation**

#### Investment Custodians (31A-4-108):

- Improves ability of Utah insurance companies to effectively manage their investment portfolios by allowing the use of approved broker/dealers as asset custodians.
- Makes Utah statutes more consistent with the laws of other states and with suggested guidance from the NAIC. Consistency among states improves interstate commerce.

#### Permitted Investments (31A-18-105 & 106):

- Eliminates inconsistencies between insurance accounting practices, 31A-17-201(2), and 31A-18-105 regarding permissible investments.

- Provides limitations on investments in American Depositary Receipts (ADRs) to ensure proper diversification and protection of policyholders.

### **Support for Legislation**

- This bill comes from the Utah Insurance Department and is consistent with suggested guidance from the NAIC.
- Industry supports these changes.